

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAJ CHRISTOPHER GUPTA,)	
)	2:00-cv-1095-GEB-GGH-P
Plaintiff,)	
)	<u>RESPONSE TO</u>
v.)	<u>DEFENDANTS' NOTICE RE</u>
)	<u>QUALIFIED IMMUNITY</u>
C.A. TERHUNE, et al.,)	
)	
Defendants.)	
_____)	

Defendants' "Notice of Withdrawal of Issue of Qualified Immunity From Jury" filed April 25, 2006, fails to show awareness of the Ninth Circuit decision in Acosta v. City and County of San Francisco, 83 F.3d 1143, 1147 (9th Cir. 1996), which states: "Regardless of who makes the ultimate determination as to qualified immunity, the jury, not the judge, must decide the disputed 'foundational' or 'historical' facts that underlie the determination." Since no trial document has been proposed for the jury to decide factual issues applicable to the defense, it appears that each Defendant is on the brink of having the defense deemed waived.

Dated: May 4, 2006

/s/ Garland E. Burrell, Jr.
GARLAND E. BURRELL, JR.
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28